THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

W.P.No. 10832 OF 2005

14th December, 2005

Between:

M/s Sri Devi Brass Industry

Rep. by its proprietor A. Ranganayakulu

R/o:Pithapuram Mandal …Petitioner

A N D

Mandal Executive Magistrate,

Pithapuram Mandal,

East Godavari District …Respondent

THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

W.P.No. 10832 OF 2005

O R D E R :

1. This writ petition has been filed assailing the notice issued by the Mandal Executive Magistrate, Pithapuram Mandal East Godavari District in exercise of power under Section 133 Cr.P.C.

2. The Mandal Executive Magistrate, Pithapuram Mandal-respondent received complaint from the villagers with regard to the Health Hazards created by the petitioner in carrying on manufacturing of brass articles. There upon the Mandal Executive Magistrate, Pithapuram tooked the complaint on file as M.C.No.13 of 2005 and pass an order under Section 133 Cr.P.C. directing the petitioner to stop the operation of the trade of manufacturing of brass articles and appear before him on 27-4-2005 at 11-00 a.m. The order passed by the Mandal Revenue Magistrate read as follows:

> "*Whereas it has been made to appear to me that you are carrying on the trade of manufacture of brass article etc., by running an Industry by name M/s Sri Devi Brass Industry at D.No. 4-39 in Chitrada village of Pithapuram Mandal, that the same injurious to the public health because of meeting of old brass in coal furnace and moulding and hammering etc., resulting in emitting of fumes and other dangerous gases which are health hazards and hence should be stopped and removed to a distance place far away from human habitations.*
>
> *And whereas the Panchayat Secretary, Chitrada ha confirmed the complaints of the local resident and also confirmed by the Environmental Engineer of the A.P. Pollution Control Board, Kakinada that the noise levels recorded during hammering processs area 90 db (A) which I far in excess of the noise standards in residential area and that the unit is operating a D.G. Set which is also causing noise to the surrounding residents and that is should be stopped.*
>
> *And whereas in the interest of general public who are facing health hazards owing to operation of your industry, I do hereby direct you and required you to stop operation of the above factory namely M/s Devi Brass Industry at D.NO. 4-39 of Chitrada village forthwith and to remove it to a distant place far away from human habitation, thus removing the nuisance within even Days from the date of receipt of this conditional order failing which you may appear before me at 11-00 a.m. on 27-4-2005 at Pithapuram and show cause why these order should not be made absolute"*

Assailing the order, the petitioner approached this Court by invoking jurisdiction under Article 226 of the Constitution of India.

3. When WPMP 13927 of 2005 came up for hearing, with the consent of both the parties, arguments heard in the writ petition itself.

4. Learned counsel appearing for the petitioner submits that the respondent is not competent to pass orders under Section 133 Cr.P.C. and therefore, the order impugned in the writ petition is required to be set aside.

5. Section 133 Cr.P.C. empowers District Magistrate or Sub-Divisional Magistrate or any other Executive Magistrate specially empowered in this behalf by the State Government, on receiving the report of a police officer or other information and on taking such evidence (if any) as he thinks fit, to pass orders for removal of nuisance etc.,

6. It is the contention of the petitioner that the Mandal Executive Magistrate, Pithapuram is not specifically empower and thereby, the order passed by him is not legal and proper.

7. On a plain reading of the order indicates that the petitioner is required to appear before the Mandal Executive Magistrate on 27-4-2005 at 11-00 a.m. The petitioner is at liberty to file objections including the competency of the Magistrate to pass order under Section 133 Cr.P.C.

8. Accordingly, this writ petition is disposed of giving liberty to the petitioner to file objection before the Mandal Executive Magistrate within fifteen days, if not already filed. No order as to costs.

_____

Justice B.Seshasayana Reddy

14th December, 2005

KM

THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

-

-

-

W.P.No. 10832 OF 2005

14th December, 2005

-

-